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15 Attorneys for Defendant
16 HOME DEPOT U.S.A., INC.

17 **UNITED STATES DISTRICT COURT**

18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19 RICK HUERTA,

20 CASE NO. C 07 3520 PJH

21 Plaintiff,

22 **JOINT CASE MANAGEMENT STATEMENT**

23 v.

24 HOME DEPOT, U.S.A., INC., a
25 Delaware corporation doing
26 business in California and
27 DOES 1-25

28 Date Action Filed: May 25, 2007
Trial Date: None set

29 Defendants.

30 Pursuant to Local District Court Rule 16-9, plaintiff
31 Rick Huerta ("Plaintiff") and defendant The Home Depot U.S.A.,
32 Inc. ("Defendant") hereby jointly submit the following Case
33 Management Statement:

1 1. Jurisdiction and Service

2

3 This Court has jurisdiction over this action because
4 complete diversity exists under 28 U.S.C. § 1332 and 28 U.S.C. §
5 1441(b). Defendant is a Delaware corporation with its principal
6 place of business in Georgia. Plaintiff resides in the State of
7 California. Further, the amount in controversy exceeds \$75,000.
8 The parties are not currently aware of any personal jurisdiction
9 or venue issues. The parties are not currently aware of any
10 parties that remain to be served.

11 2. Facts

12

13 This is a wage and hour case in which Plaintiff claims
14 that he was not properly classified as exempt from California
15 overtime pay requirements when he was employed by Defendant as an
16 Assistant Store Manager. Defendant contends that it properly
17 classified all of its Assistant Store Managers, including
18 Plaintiff, as exempt pursuant to the appropriate Wage Orders of
19 the California Industrial Welfare Commission and California law.

20

21 Plaintiff alleges that he is entitled to unpaid
22 overtime, waiting time penalties pursuant to Labor Code Section
23 203, penalties for failure to provide meal and/or rest periods,
24 and for a penalty for failing to provide him accurate itemized
25 wage statements. Plaintiff has also alleged causes of action
26 based on unfair competition, failure to produce records, and
27 constructive trust.

1 Defendant denies Plaintiff's allegations and denies
2 that he has been damaged in any sum. Defendant contends that
3 during the entire period during which Plaintiff was employed as
4 an Assistant Store Manager, Plaintiff performed exempt duties and
5 fit within the definition of an exempt employee. Defendant
6 denies that plaintiff was misclassified and denies that he has
7 any viable cause of action against Defendant.

8

9 3. Legal Issues

10

11 The key disputed point of law in this action is whether
12 Plaintiff was exempt from the overtime and meal period provisions
13 of the California Wage Orders. See California Industrial Welfare
14 Commission Order No. 7-2001. Also at issue is whether Plaintiff
15 may maintain a claim for relief under Business and Professions
16 Code Section 17200, et seq. (unfair competition) and the
17 appropriate statute of limitations. Arias v. Superior Court, 153
18 Cal. App. 4th 777 (2007).

19

20 4. Motions

21

22 There are no prior or pending motions in this matter.
23 Defendant anticipates filing a motion for summary judgment.
24 There are no discovery-related motions currently anticipated,
25 though the parties may file such motions if necessary.

1 5. Amendment of Pleadings
2
34 The parties do not expect to add or dismiss any
5 parties, claims, or defenses at this time. The parties propose
6 November 30, 2007, to amend the pleadings.
78 6. Evidence Preservation
9
1011 The parties have taken all steps necessary to preserve
12 evidence relevant to the issues reasonably evident in this
13 action. Pursuant to FRCP 26(f)(3), the parties do not believe
14 that there is a need for discovery into any electronically stored
15 information. To the extent that the parties later develop a need
16 for discovery from electronically stored information, they will
17 discuss such information at the appropriate time.
1819 7. Disclosures
20
2122 The parties agree that no changes should be made to the
23 timing, form or requirement for disclosures under FRCP 26(a).
24 The parties will exchange initial disclosures on or before the
25 Conference on October 11, 2007.
2627 8. Discovery
28
2930 The parties have not taken any discovery to date. In
31 addition to the exchange of initial disclosures, the parties
32 anticipate completing written discovery, document productions,
33

1 and any necessary depositions.

2
3 The parties may require discovery on the following
4 subjects: (1) Plaintiff's duties and his supervisory
5 responsibilities; (2) Plaintiff's performance of his duties and
6 supervisory responsibilities; (3) Plaintiff's allegations in his
7 complaint, including but not limited to his claims that he was
8 misclassified as an exempt employee; (4) Plaintiff's work
9 schedules; (5) Plaintiff's meal periods; (6) Defendant's policies
10 and procedures related to Assistant Store Managers and their job
11 duties; (7) Defendant's responses and defenses to Plaintiff's
12 claims; (8) Plaintiff's complaints, if any, related to his work
13 duties and any discipline he received; (9) Liability and damages,
14 including, but not limited to, Plaintiff's efforts to mitigate
15 any alleged damages.

16
17 The parties expressly reserve their rights to conduct
18 discovery on any and all other matters pertinent to the claims
19 and defenses raised in the pleadings or otherwise available to
20 the parties.

21
22 The parties propose the following discovery plan pursuant to
23 FRCP 26(f). The parties agree that all discovery should be
24 completed by April 25, 2008, or within ninety days before the
25 date this matter is set for trial. With regard to expert
26 disclosures and discovery, the parties agree that such discovery
27 shall be completed at least sixty (60) days before the trial date
28 or, if the evidence is intended solely to contradict or rebut

1 evidence on the same subject matter identified in the other
2 party's expert disclosure, within thirty (30) days after the
3 disclosure made by the other party.

4

5 The parties agree that no changes should be made in the
6 limitations on discovery imposed by the FRCP or the Local Rules
7 with the exception of the time limits imposed on depositions by
8 FRCP 30. The parties stipulate that the provisions of FRCP
9 30(d)(2), which limit the length of a deposition to one day of
10 seven hours, will not apply to the depositions of Plaintiff if
11 additional time is reasonably necessary to complete his
12 deposition.

13

14

9. Class Actions

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This is not a class action.

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10. Related Cases

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The parties currently are unaware of any cases related
to this action.

22

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11. Relief

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Plaintiff claims overtime, penalties and interest of
approximately \$110,500. Defendant contends that if liability is
established, damages should be calculated based upon the
admissible documentary and testimonial evidence set forth in the

1 action.

2

3 12. Settlement and ADR

4

5 The parties agree that it is too early to determine the
6 prospects for settlement. The parties have complied with the
7 requirements of ADR L.R. 3-5 by agreeing to engage in private
8 mediation (see ADR Certification and Stipulation/Order, filed
9 separately). The parties agree that they will be in a better
10 position to conduct serious settlement negotiations after initial
11 disclosures and discovery have been completed.

12

13 13. Consent to Magistrate Judge For All Purposes

14

15 The parties agree that they are willing to consider
16 having this matter assigned to a magistrate judge for all further
17 proceedings including trial and entry of judgment.

18

19 14. Other References

20

21 The parties agree that this case is not suitable for
22 reference to binding arbitration, a special master, or the
23 Judicial Panel on Multidistrict Litigation.

24

25 15. Narrowing of Issues

26

27 The parties agree that the IWC Wage Order 7-2001 sets
28 forth the correct exemptions under which Defendant contends that

1 Plaintiff was qualified. The parties do not currently anticipate
2 an ability to narrow any other issues presented in this case.
3

4 16. Expedited Schedule

5

6 The parties do not believe that this case can or should
7 be subject to an expedited or streamlined schedule that is
8 inconsistent with the proposed dates set forth below.
9

10 17. Scheduling

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12 The parties propose the following dates:

13

14 (1) Discovery Cutoff: April 25, 2008
15 (2) Motion Cutoff: May 23, 2008
16 (3) Designation of Experts: June 6, 2008
17 (4) Final Pretrial Conference: July 18, 2008
18 (5) Trial: August 18, 2008
19

20 18. Trial

21

22 The parties agree that this case may be tried to the
23 court and the expected length of the trial is 3 to 4 days.
24

25 19. Disclosure of Non-party Interested Entities or
26 Persons

27 Each party has filed the "Certification of Interested
28

1 Entities or Persons" required by Civil Local Rule 3-16. Plaintiff
2 has not identified any persons or entities. Defendant has
3 identified Home Depot, Inc., its parent company.

4

5 20. The parties do not believe that there are any
6 other matters that may facilitate the just, speedy and
7 inexpensive disposition of this matter.

8

9 DATED: October 9, 2007 PAYNE & FEARS LLP

10

11 By:/s/ ANDREW J. JARAMILLO

12 Attorneys for Defendant
13 THE HOME DEPOT, INC.

14 DATED: October 9, 2007 UNITED EMPLOYEES LAW GROUP, P.C.

15

16 By:/s/ BRUCE DAVIS

17 Attorneys for Plaintiff
18 RICK HUERTA